S T A T E O F N E W Y O R K

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I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the real property law, in relation to requiring a loan counseling disclosure as part of contract of sale for the transfer of property

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The real property law is amended by adding a new section 242-a to read as follows:

S 242-A. LOAN COUNSELING DISCLOSURE AS PART OF CONTRACT OF SALE. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "RESIDENCE" SHALL MEAN THE HOUSING THAT A PERSON, WHENEVER ABSENT, INTENDS TO RETURN TO.

(B) "MORTGAGOR" SHALL MEAN THE PERSON WHO IS RESPONSIBLE FOR REPAYMENT OF A LOAN WHICH IS SECURED BY RESIDENTIAL REAL PROPERTY THEY OWN OR OCCUPY.

(C) "DIVISION" SHALL MEAN THE DIVISION OF HOUSING AND COMMUNITY RENEWAL.

(D) "LOAN COUNSELOR" SHALL MEAN A PERSON OR PERSONS OR AN ENTITY WHICH EMPLOYS OR SUPERVISES SUCH PERSON OR PERSONS WHO ARE TRAINED IN OR HAVE SPECIALIZED KNOWLEDGE OF THE TYPES OF MORTGAGES AVAILABLE, TYPES OF INTEREST RATES, REFINANCING PROCESS AND COSTS, HOME EQUITY LOANS AND ASSUMPTION OF MORTGAGES AND WHO PROVIDE SERVICES IN THIS STATE.

(E) "LIST" SHALL MEAN A LIST TO BE DEVELOPED BY THE DIVISION AND WHICH SHALL BE UPDATED ANNUALLY NOT LATER THAN NOVEMBER FIFTEENTH. THE LIST, ONCE UPDATED, SHALL BE POSTED ON THE INTERNET WEBSITE OF THE DIVISION NOT LATER THAN DECEMBER FIRST OF EACH YEAR AND SHALL APPLY TO THE FOLLOWING CALENDAR YEAR. IT SHALL CONTAIN THE NAMES OF EVERY LOAN COUN-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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SELOR APPROVED BY THE COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL BY COUNTY AND THEREAFTER EACH COUNTY SHALL BE ASSIGNED TO A REGION AND THE DIVISION WEBSITE SHALL INCLUDE A LIST OF APPROVED LOAN COUNSELORS BY REGION THROUGHOUT THE STATE. SUCH COMMISSIONER SHALL NOT BE REQUIRED TO UNDERTAKE A PARTICULAR APPROVAL PROCESS TO DETERMINE IF SOMEONE OR AN ENTITY IS AN APPROVED LOAN COUNSELOR AND MAY UTILIZE ANY OTHER LIST OF LOAN COUNSELORS PROVIDED BY ANOTHER AGENCY SUCH COMMISSIONER APPROVES OF BUT SHALL, IN ANY EVENT, BE RESPONSIBLE FOR LISTING LOAN COUNSELORS BY REGION ON THE DIVISION'S WEBSITE.

(F) "RESIDENTIAL REAL PROPERTY" SHALL INCLUDE RESIDENTIAL PROPERTY AND ANY PROPERTY OR BUILDING CONTAINING BOTH RESIDENTIAL AND COMMERCIAL SPACE.

2. LOAN COUNSELING DISCLOSURE AS PART OF A CONTRACT OF SALE. A LOAN COUNSELING DISCLOSURE NOTICE AS DESCRIBED IN SUBDIVISION FOUR OF THIS SECTION SHALL BE ATTACHED TO ALL CONTRACTS OF SALE OF RESIDENTIAL REAL PROPERTY.

3. THE FORM SHALL BE PROVIDED BY THE ATTORNEY AND/OR BROKER THAT IS RESPONSIBLE FOR GENERATING THE CONTRACT OF SALE AT THE TIME THE CONTRACT OF SALE IS GENERATED. MODIFICATIONS AND EXTENSIONS OF MORTGAGES ARE EXCLUDED FROM SUCH REQUIREMENT. THE FORM AND LIST PROVIDED PURSUANT TO THIS SECTION SHALL BE IN AT LEAST TWELVE-POINT TYPE.

4. THE FOLLOWING FORM SHALL BE SIGNED AT THE TIME OF EXECUTION OF THE CONTRACT OF SALE AND ATTACHED THERETO.

"LOAN COUNSELING DISCLOSURE

I HEREBY CERTIFY THAT ON _____ (DATE) I HAVE RECEIVED A LIST OF APPROVED HOME LOAN COUNSELORS. I UNDERSTAND THAT I HAVE THE RIGHT TO CONSULT WITH A HOME LOAN COUNSELOR PRIOR TO THE TIME OF EXECUTING A MORTGAGE. SUCH COUNSELOR MAY ADVISE ME OF MY RIGHTS, RESPONSIBILITIES AND CURRENT AND FUTURE OBLIGATIONS AS A HOME BUYER. I FURTHER UNDERSTAND THAT IF I CHOOSE TO ENTER INTO ANY OF THE FOLLOWING MORTGAGE ARRANGEMENTS, I MAY BE SUBJECT TO INCREASED INTEREST RATES AND HIGHER MONTHLY PAYMENTS AT A FUTURE TIME:

(A) OPEN ARM (ADJUSTABLE RATE MORTGAGE);
(B) INTEREST ONLY MORTGAGE;
(C) NEGATIVE AMORTIZATION LOAN;
(D) PIGGYBACK MORTGAGE;
(E) ADJUSTABLE RATE MORTGAGE;
(F) LONG-TERM (40 YEAR) FIXED RATE MORTGAGE

SIGNED_____"

5. THE FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION SHALL NOT CREATE A CAUSE OF ACTION OR INVALIDATE A CONTRACT OF SALE. THE BANKING DEPARTMENT OR ATTORNEY GENERAL MAY, HOWEVER, IN ITS DISCRETION INVESTIGATE THE REPEATED FAILURE OR ALLEGED FAILURE OF AN ATTORNEY AND/OR BROKER TO PROVIDE THE REQUIRED INFORMATION AND DISCLOSE PUBLICLY THE FAILURE OF THAT ATTORNEY AND/OR BROKER TO PROVIDE THE REQUIRED INFORMATION. COUNSELING WHICH TAKES PLACE AFTER THE MORTGAGOR SIGNS THE FORM PROVIDED FOR IN SUBDIVISION FOUR OF THIS SECTION SHALL NOT CREATE THE RIGHT OF A MORTGAGOR WHO CHOOSES TO WITHDRAW FROM A MORTGAGE PRIOR TO THE EXECUTION OF LOAN DOCUMENTS TO REFUSE PAYMENT OF ANY REASONABLE LOAN REVIEW AND PROCESSING FEES HE OR SHE HAS AGREED TO PAY WHEN HE OR SHE APPLIES FOR THE MORTGAGE.

S 2. This act shall take effect immediately.